Mass. Council.

Report of the memorial of the [illegible] and others. 1840.

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SMITHSONIAN DEPOSIT

REPORT

ON

MEMORIALS

OF THE

SENECA INDIANS AND OTHERS.

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OF THE

SENECA INDIANS AND OTHERS,

ACCEPTED NOVEMBER 21, 1840,

IN THE

COUNCIL OF MASSACHUSETTS.

Boston:
DUTTON AND WENTWORTH, STATE PRINTERS.
Nos. 10 and 12 Exchange Street.

1840

Christians, and that there are not less than two hundred and forty professors of religion among the Senecas and Tuscaroras. The "Friends," with that liberality and Christian spirit for which their society has always been distinguished, have had a settlement among the Senecas for many years, at which the Indians have been instructed in the rudiments of learning, and in agriculture, and the mechanic arts. It is natural for them to feel a deep interest in those who have so long been under their guidance and protection.

From a very early period Massachusetts has been, to a certain extent, the guardian of the Senecas; and they now come to us, and entreat our intervention to save them from the loss of all the lands and improvements they possess.

The Senecas claim to own four large and valuable tracts of land in the state of New York, called "Reservations," and which are as follows, viz.

Tonewanda Reservation, near Niagara River, containing about	13,000 acres
Buffalo Reservation, near the city of Buffalo, containing about	53,000 "
Cattaraugus Reservation, near Cattaraugus Creek, containing about	22,000 "
Alleghany Reservation, near the Alleghany River, containing about	31,000 "
	119,000 "

Much of this land is said to be among the most fertile and valuable in the State of New York.

At the close of the revolutionary war, the Commonwealth of Massachusetts claimed an interest in several large tracts of land lying in the State of New York. By articles of agreement, made at Hartford, and bearing date December 16th, 1786, the State of New York granted to Massachusetts, its grantees, their heirs, and assigns the right of preëmption to the lands described in that instrument, including the abovementioned four Reservations; and Massachusetts ceded to the State of New York the sovereignty and jurisdiction over those lands. In this manner, the difference between Massachusetts and New York was amicably adjusted. Under that agreement Massachusetts held the sole and exclusive right to purchase these lands whenever the Indians should voluntarily dispose of them.

The 10th and 11th articles of the agreement of Dec. 16th, 1786, are in the following words, viz. "The Commonwealth of Massachusetts may grant the right of preëmption of the whole, or of any part of the said lands and territories to any person, or persons, who, by virtue of such grant, shall have good right to extinguish, by purchase, the claims of the native Indians: Provided, however, that no purchase from the native Indians by any such grantee or grantees shall be valid unless the same shall be made in the presence of, and approved by, a Superintendent, to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts." "Section 11th—That the grantees of the said lands and territories under the

Commonwealth of Massachusetts, shall, within six months after the confirmation of their respective grants, cause such grants or the confirmation thereof, or copies of such grants or confirmations, certified or exemplified under the seal of the Commonwealth of Massachusetts, to be deposited in the said office of the Secretary of the state of New York, to the end that the same may be recorded there:—and, after the same shall have been so recorded, the grantees shall be entitled to receive again from the said Secretary their respective grants, or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever: and every grant, or confirmation which shall not, or —— of which shall not be so deposited, shall be adjudged void."

Since this agreement of December 16, 1786, and subject to this right of preëmption, the United States have acknowledged and guarantied to the New York Indians, the title and enjoyment of these lands.

By an agreement bearing date March 12, 1791, this Commonwealth contracted to sell its said right of preëmption to said Ogden, his heirs and assigns:—and, by sundry deeds bearing date May 11, 1791, the said Ogden assigned his interest in that agreement, to Robert Morris.

On the same 11th May, 1791, this Commonwealth conveyed to said Morris, the said right of preëmption, and all other its right, title, and interest in, and to said lands,—to hold to him, his heirs, and assigns. Copies of the abovementioned instruments are in the 10th volume of the Records of Massachusetts, and some of the original instruments are on its files.

A Resolve of this Commonwealth, approved January 26, 1828, sets forth part of the said agreement of 16th December, 1786; recites that Robert Morris, Thomas Ludlow Ogden, and Benjamin W. Rogers, are the purchasers of certain tracts of land included in said territories, and are entitled to have the purchase confirmed on the part of this Commonwealth; and authorizes his Excellency, with the advice and consent of the Council, to confirm the said purchase, if the same shall appear to have been made in conformity to said articles of agreement; and also to confirm in like manner, for and in behalf of this Commonwealth, all other purchases, which have been made, or which may hereafter be made, in conformity to said articles of agreement; and to ratify such confirmations in such form and manner under the Seal of this Commonwealth, as his Excellency may think proper to carry the aforesaid articles of agreement into full effect.

The sale and conveyance by Massachusetts of its said right of preëmption, or exclusive right to purchase the land of the Indians, gave no title or interest in the land itself. Such title or interest could be acquired only by a sale and conveyance thereof by the Indians; and the 10th article of the agreement of 16th December, 1786, was intended to guard them effectually against fraud and imposition.

Sales have been repeatedly made and approved in the manner above suggested. From time to time, Massachusetts has appointed agents to be present at meetings held by the Indians for the purpose of making sale of their

lands to those having the right of preëmption. On the 14th December, 1837, the Governor and Council appointed Josiah Trowbridge its superintendent for this purpose.

On 2d March, 1838, Thomas Ludlow Ogden, and Joseph Fellows, both of the State of New York, represented to the Governor and Council of Massachusetts, that they, being grantees under the Commonwealth of Massachusetts, hold for themselves, and their associates, certain lands in the State of New York, being part of the territory whereof the right of soil and property was ceded and confirmed to Massachusetts by the agreement of December 16, 1786, the said lands being also part of the portion of said territory, granted by said Commonwealth to Robert Morris, A. D. 1791; that the whole of this territory was then subject to the possessory right of the native Indian occupants; that various treaties have been since made with them, by which their right to it has been extinguished, except as to certain tracts reserved for their own occupation, and for the purchase of which a treaty was lately held at Buffalo Creek, under the authority of the United States, and in the presence of Josiah Trowbridge, Esq., the superintendent appointed for the purpose by the Commonwealth of Massachusetts. The memorialists proceed to say, that, at this treaty, they purchased of the Seneca Tribe, for $202,000, all their right and claim of and in the following tracts of land, being that so reserved and occupied by said tribe; and which by indenture, under the hands and seals of the principal chiefs and headmen, dated January 15, 1838,

they for the said consideration, sold, released, and confirmed to said memorialists, viz.

Buffalo Creek Reservation, in the County of Erie, containing	49,920 acres
The Cattaraugus Reservation, in the Counties of Erie, Chatauque, and Cattaraugus, containing	21,680 "
The Alleghany Reservation, in the County of Cattaraugus, containing	30,469 "
The Tonewanda Reservation, in the Counties of Erie and Genesee, containing . .	12,800 "
	114,869 "

being, in the whole, 4,131 acres less than the Senecas represent the contents in their memorials. These are the same four Reservations before mentioned in this Report. Messrs. Ogden and Fellows proceed in their memorial to state, that, at the same treaty at Buffalo Creek, they purchased of the Tuscarora tribe, the Tuscarora Reservation in Niagara County, containing 1,920 acres;—that they paid for it $9,600, and were also to pay the value of improvements thereon, to be ascertained by appraisement. Messrs. Ogden and Fellows refer to the conveyances made to them by the Senecas and Tuscaroras respectively, approved by Mr. Trowbridge our agent, and by the Commissioner of the United States, appointed to hold the treaty;—and pray that the said purchases may be confirmed, ratified, and exemplified under the seal of the Commonwealth, to be recorded as provided in the original contracts.

The Committee of the Council of Massachusetts, to whom the said memorial of Messrs. Ogden and Fellows was submitted, by their report of 9th March, 1838, state, that the purchases, mentioned in said memorial, were made in presence of, and approved by Mr. Trowbridge, the Superintendent appointed by Massachusetts, and recommended that the Council consent and advise to the confirmation of said purchases by his Excellency the Governor.

This report was accepted, and, in pursuance of it, the Governor gave his certificate approving of said purchases, bearing date, March 12, 1838, and recorded in the office of the Secretary of State of New York, September 11, 1838.

The deed of conveyance of the Seneca Reservations bears date January 15, 1838. It commences with a recital, that, at a treaty held under the authority of the United States, at Buffalo Creek in the County of Erie and State of New York, between the chiefs and headmen of the Seneca nation of Indians, *duly assembled in council, and representing and acting for the said nation,* on the one part, and Messrs. Ogden and Fellows on the other part, concerning the purchase of the right and claim of the said nation of Indians, in and to the lands within the State of New York remaining in their possession, Ransom R. Gillet, Esq., the Commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, Esq., the Superintendent on behalf of Massachusetts, were severally present at the said treaty, and that said chiefs and head-

men, in behalf of said Seneca nation, agreed to sell and release to said Ogden and Fellows, all the right, title and claim of said nation, of, in, and to said lands; it also avers that this deed of conveyance, or release, was read and explained to said parties, and mutually agreed to; after this recital follows the deed. It purports to be an indenture made between the chiefs and headmen of the Seneca nation "*duly assembled in council,*" and acting for and in behalf of said nation, of the first part, and Messrs. Ogden and Fellows, of the second part:—The indenture witnesseth that the said chiefs and headmen of the Seneca nation of Indians, in consideration of $202,000 "to them in hand paid by the said Ogden and Fellows," the *receipt* whereof is acknowledged, grant, bargain, sell, release and confirm to said Ogden and Fellows, their heirs, and assigns, the said four Reservations, giving the name and contents of each, as stated in said memorial of Ogden and Fellows, with the qualification of "more or less" to each, giving no boundaries, but adding to the description the words, "as the said several tracts of land have been heretofore reserved and are held and occupied by the said Seneca nation of Indians, or by individuals thereof,"—together with all and singular the rights, privileges, hereditaments, and appurtenances to each and every of the said tracts or parcels of land belonging or appertaining—and all the estate, right, title, interest, claim, and demand of the said party of the first part, and of the said Seneca nation of Indians, of, in, and to the same, and to each and every part and parcel thereof; to hold the said premises to said Ogden and Fellows, their

heirs and assigns, but as joint tenants, and not as tenants in common. This conveyance, at its close, purports to be an instrument of four parts, viz.—one to be kept by the United States, one by the State of Massachusetts, one by the Seneca nation, and one by Messrs. Ogden and Fellows. The part held by Massachusetts, is not executed by Messrs. Ogden and Fellows, or either of them. It purports to be signed, sealed, and executed, by *forty-five* warriors and headmen, of whom nine subscribe their full names, thirty-four make their marks, and two have their marks made by others, as their agents.

This deed of conveyance bears even date with the treaty of Buffalo Creek, made between the United States and the Senecas, &c. viz. January 15, 1838. The deed and treaty are so intimately connected, that we must now state some of the contents, and a part of the history of the treaty. By the deed it would appear merely that the Seneca nation sold and conveyed their lands, and received $202,000 for them. But much more appears by the treaty. In that, the nations of New York Indians release all their interest in certain land at Green Bay, secured to or for them, by the Menominee treaty of 1832, excepting one tract thereof, occupied by certain New York Indians. This, (to say the least,) was immaterial so far as the Senecas were concerned, as they never accepted the lands at Green Bay.

By this treaty of Buffalo Creek, (January 15, 1838,) the United States set apart for the New York Indians a tract of country, situate directly west of the State of Missouri, as a permanent home for said Indians. The

treaty contains general provisions for all the New York Indians, and special articles applicable to the several tribes. The 15th Section applies to the Senecas. That article states that Ogden and Fellows, the assignees of the State of Massachusetts, have purchased of the Seneca nation their interest in certain lands, "*by a deed of conveyance, a duplicate of which is hereto annexed,*" and provides that the consideration for that purchase, viz. the $202,000 shall be paid to the *United States;* that $100,000 of it shall be invested in safe stocks for their use, "the *income* of which is to be paid to them *at their new homes* annually," and that the balance, ($102,000) should be paid to the owners of improvements on the Seneca lands sold to Ogden and Fellows, according to an appraisement to be made of those improvements; the owners of those improvements to receive their proportions of said appraisement, "on their severally relinquishing their respective possessions to Ogden and Fellows."

But this treaty (with which the conveyance to Ogden and Fellows was thus incorporated,) secured to the Senecas other and valuable considerations for the sale of their land and for their emigration, many of which considerations were afterwards annulled or commuted for others, by the Senate of the United States, as will hereinafter be shown.

This treaty of 15th January, 1838, purports to be signed on the part of the Senecas, by the same persons who signed the said deed of conveyance, in the same manner, and in the same order.

A supplementary article to this treaty of 15th January, 1838, was made with the St. Regis Indians, 13th Febru-

ary. 1838, which relates to those Indians only, but which is one of the subjects mentioned in the Resolution of the Senate of the United States, to be referred to in a subsequent part of this report.

The treaty of 15th January, 1838, (in the form in which it was submitted by the President to the Senate,) has never been approved or ratified on the part of the United States. By that treaty sundry provisions were made in favor of the Indians, which were annulled, or commuted for others by the Senate of the United States, (as we have before stated,) when the treaty was under their consideration in June, 1838, viz.—1st, the provision that the United States should give to the New York Indians a part of the Cherokee territory, (if the United States should acquire it,) in exchange for part of the land assigned to the New York Indians west of the state of Missouri ;—2d, the provision that the United States should remove the New York Indians to their new homes ;—3d, the provision that the United States should erect for the use of the respective tribes of New York Indians, at their new homes, Council-houses, Churches, School-houses, pay suitable teachers, &c. &c. ;—4th, the provision that the United States, "taking a deep interest in the improvement of the Indians in useful knowledge," would set apart a permanent fund of $30,000, the income of which should be applied to maintain a Literary Institution among the Indians :—5th, the provision that the United States would indemnify the New York Indians against the depredations of other Indians, at their "new homes" ;—6th, the provision that the United

States should have one of its agents to reside among the New York Indians at the west. All these provisions for the Indians, contained in the treaty, were annulled by the Senate of the United States.

The Senate (two thirds of the Senators present concurring) having thus altered and amended the treaty of 15th January, 1838, introduced into it the following as the 15th article, viz. "the United States hereby agree that they will appropriate the sum of $400,000, to be applied from time to time, under the direction of the President of the United States, in such proportions as may be most for the interest of said Indians, parties to said treaty, for the following purposes, to wit:—to aid them in removing to their new homes, and supporting themselves the first year after their removal; to encourage and assist them in education, and being taught to cultivate their lands; in erecting mills, and other necessary houses; in purchasing domestic animals, and farming utensils, and acquiring a knowledge of mechanic arts."

The Senate further resolved, (two thirds of the Senators present concurring,) "that the Senate advise and consent to the ratification of the supplemental article to the treaty, (concluded at Buffalo Creek in the State of New York, January 15, 1838,) which was made at the Council-house of St. Regis, on the 13th day of February, 1838, *provided* the chiefs and headmen of the St. Regis Indians,—residing in New York, *will, in general Council*, accept of, and adopt the aforesaid treaty,—as modified by the preceding resolution of ratification. Provided always, and be it further resolved, that the treaty shall have no force

or effect whatever, as it relates to any of said tribes, nations, or bands of New York Indians, nor shall it be understood that the Senate have assented to any of the *contracts connected with it, until the same,* with the amendments herein proposed, is submitted and fully and fairly explained, by a Commissioner of the United States, to each of said tribes, or bands, separately assembled in Council, and they have given their free and voluntary assent thereto. And *if* one or more of said tribes or bands, *when consulted as aforesaid,* shall freely assent to said treaty as amended, *and to their contract connected therewith,* it shall be binding and obligatory upon those so assenting, although other or others of said bands or tribes may not give their assent, and thereby cease to be parties thereto. Provided further, if any portion or part of said Indians do not emigrate, the President shall retain a proper proportion of said sum of $400,000, and shall also deduct from the quantity of land allowed west of the Mississippi, such number of acres, as will leave to each emigrant 320 acres only."

The fact that the United States did *not ratify* the treaty of 15th January, 1838, but materially altered it, and the views of the Senate as expressed in the last cited resolution, show that the Senate held any assent given by the Senecas to that treaty, to be wholly void,—and the deed of conveyance (or contract) connected therewith, to be also void,—unless that deed, and the treaty as amended, should be afterwards freely assented to by the Senecas. The same resolution shows that that assent was not to be asked until after a full and fair explanation

of the amendments &c., to the several tribes assembled in Council. And the expressions used in the resolution in regard to the St. Regis Indians, as well as the other tribes, show that the Senate intended the assent of the Indians should be given *in Council, and not out of Council.*

The United States Commissioner, (Mr. Gillet,) submitted the amended treaty to the New York Indians, all of whom, excepting the Senecas, assented to it. In August, 1838, he submitted it to the Senecas assembled in Council. Gen. H. A. S. Dearborn was present, as the agent of Massachusetts. To induce the chiefs and headmen to sign the amended treaty, Mr. Gillet assured them that the United States officer presiding over the Indian Department, considered the contract for the sale of their lands to Ogden and Fellows complete, and that it might be carried into effect, whether the Senecas assented to the amended treaty or not. Gen. Dearborn very properly stated in reply, that the Governor of Massachusetts considered that contract void, unless the treaty as amended, received the assent of the Senecas. As a new inducement to sign the amended treaty, the Ogden Company, (whom Messrs. Ogden and Fellows represent,) offered on 28th September, 1838, life leases, free of rent, to those Senecas who should wish to remain on their New York lands, "and who should assent to the *treaty to the lands* respectively held and occupied by them as farming lands." One of the chiefs proposed in the Council, that those opposed to the treaty, should sign a protest against it, in presence of Messrs. Gillet and Dearborn. Mr. Gil-

let, the United States Commissioner, refused to authenticate such protest, or to keep the Council open for its reception. The protest was signed in presence of Gen. Dearborn, by 63 chiefs and headmen, of whom 48 are said to be admitted chiefs,—being more than half of the whole number of chiefs, whether we assume the whole number to be as stated by the friends or opponents of the treaty. Only 16 chiefs signed the amended treaty in open Council. Mr. Gillet after the adjournment of the Council, and at his own room and at private houses, (out of Council,) obtained 15 more signatures to the amended treaty,—making in all, 31 signatures. No more being disposed to sign, the Council was adjourned to November 15, 1838. Five more signatures were sent to Washington, but the Department rejected them. A printed copy of the amended treaty bearing the signatures of 35 chiefs and 117 warriors, had been received by the United States Commissioner; but the Department rejected it, because it bears date *before* the assent in Council, and before the amended treaty had been explained in Council, pursuant to the resolution of the United States Senate. This is shown by the letter of T. H. Crawford to the Secretary of War, dated October 29, 1838, saying that on that day only 16 Seneca chiefs and headmen had assented to the amended treaty in Council, and 15 out of Council,—being, in the whole, only *thirty-one*.

On 30th October, 1838, Mr. Gillet, the United States Commissioner, was directed to return to the Senecas, and procure the assent of a majority of all their chiefs. He returned accordingly, but the Council, (adjourned to 15th

November, 1838,) was never held. Mr. Gillet obtained the signatures of 10 more chiefs and headmen, wherever he could find them out of Council, making in the whole, 41. By Mr. Crawford's letter of 15th January, 1839, it appears that two other signatures were obtained afterwards, one of which he rejected; and the other was made by attorney, after the amended treaty was returned to Washington. And such is all the assent that has ever been obtained from the Senecas to the amended treaty, viz. 16 signatures in Council, and 25 or 26 out of Council. In a letter of 11th January, 1839, Mr. Gillet, (on the authority of Judge Stryker,) fixes the whole number of Seneca chiefs at 81, on the 29th of March, 1838. Three of them dying afterwards, their places were filled (as the Senecas say, illegally,) by three persons friendly to emigration.

The amended treaty, in this state, was submitted to the President, but he (by advice of the Secretary of War) submitted it to the Senate, on the 21st of January, 1839, for their advice. Therefore it could not have been plain to the President or Secretary, that the amended treaty had received the assent of the Senecas, pursuant to the Senate's resolution of June, 1838. And it does seem that the Senate did not consider that any such assent had been given;—for the Senate resolved, March 2, 1839, "that whenever the President of the United States shall be satisfied that the assent of the Seneca tribe of Indians has been given to the amended treaty of June 11, 1838, with the New York Indians, according to the true intent and meaning of the resolution of the

Senate of 11th June, 1838, the Senate recommend that the President make proclamation of said treaty, and carry the same into effect."

In August, 1839, the Secretary of War, with Gen. Dearborn, met the Senecas in Council: What progress was then made in obtaining the assent of the Senecas to the amended treaty is shown by the President's Message to the Senate of 14th January, 1840, again transmitting the amended treaty;—in which Message he says, "no advance towards obtaining the assent of the Senecas to the amended treaty, in Council, was made,—nor *can* a majority of them in Council, be now obtained."

Still this amended treaty has been ratified on the part of the United States, as shown by a Resolve of the Senate of the United States, passed March 25, 1840, and by the proclamation of the President, bearing date April 4, 1840. We are informed that this Resolve of the Senate was adopted by a majority of only one, and contrary to the above intimation of the opinion of the President, and notwithstanding the report of the Committee on Indian Affairs, that the amended treaty had not received the assent of the Seneca nation.

The documents shown to us, represent the amended treaty to be signed by only 41 Senecas,—though we find the printed copy of it purports to be signed by 43. Of them 9 write their names at length,—34 make their marks,—and 2 make their marks by agents. The rejected signature, and the signature given by attorney at Washington, account for the difference between 41 and 43.

The memorialists and the delegations who have

appeared before the Committee, now object both to the treaty and to the alleged conveyance, for the following reasons:

1st,—They say there are 91 lawful chiefs in the Seneca nation, and that the amended treaty and the deed, whether signed by 41 or 43, have not been assented to in any form by a majority of 91, viz., 46 chiefs and headmen.

2d,—Of those whose names are on that treaty and deed, the Senecas object that 6 of them are not lawful chiefs,—and that at least eleven of their chiefs, were bribed by the agents of the Ogden Company,—that the contracts of bribery are in writing, and they exhibit the contracts, by which it appears that at least 8 chiefs, (who had been bribed before the date of the deed and first treaty,) signed the deed and amended treaty. If this be true, and the signatures of the bribed chiefs be rejected, the deed and amended treaty, would each have less than a majority of the chiefs, whether their whole number be 91, or 81, or 76. In addition to these cases, other instances of bribery are alleged, in proof of which, the affidavits of the persons bribed are exhibited. On this point, the Senecas also urge the declaration of the President of the United States, who said in his communication to the Senate, dated January 13, 1840,—"That improper means have been employed to obtain the assent of the Seneca chiefs, there is every reason to believe; and I have not been able to satisfy myself, that I can, consistently with the resolution of the Senate of the 2d March, 1839, cause the treaty to be carried into effect, in respect to the Seneca tribe."

3d,—It is said that six others of those alleged to have signed, make oath that they never signed their names or made their marks to the amended treaty, knowing what they did at the time.

4th,—Only 16 signatures to the amended treaty were obtained in open Council; and the Senecas declare that no treaty with them can be valid, unless made and signed in open Council;—that the resolution of the Senate required their assent to the amended treaty, to be given in open Council;—that this intention and requisition of the Senate, is express as to the St. Regis Indians, and equally clear in regard to the Senecas;—that only 16 Seneca chiefs having so assented, the treaty has not received the assent of the Seneca nation;—that the chiefs can act, (like all legislators,) only in Legislative Council,—and that out of such Council, they are powerless. To show that they are correct in these opinions and conclusions, they refer to the letter of Mr. Crawford to the Secretary of War, dated 29th October, 1838, in which he says, "Perhaps too, it was intended by the Senate, that they," (the Senecas,) "should assent in Council." They also refer to Gov. Everett's opinion, viz.—"The treaty making power, is granted by the Constitution, in general terms. No modifications of its exercise in reference to Indian tribes, are recognized. As it would certainly be unconstitutional for the President of the United States to attempt to treat with individual members of any foreign State or Government, (not duly authorized to represent the entire body,) or to attempt to obtain the ratification of a treaty, by means of the assent

of individuals of the Senate, not duly assembled and acting as such,—I remain of opinion, that the constitutionality of attempting to obtain the assent of individual Indian chiefs to the amended treaty, in the manner in question, is doubtful." The Senecas also refer to the message of the President to the Senate, on 13th *January*, 1840, in which he says, "the provision of the Resolution of the Senate of 11th June, 1838, *requiring* the assent of each of said tribes to the amended treaty to be given *in Council*, and which was also made a *condition precedent* to the recommendation to me of the 2d March, 1839, to carry the same into effect, has not been complied with, as it respects the Seneca tribe." They also refer to the same opinion as expressed by the Committee on Indian Affairs. And to all this they add, that both the treaty and deed falsely purport to have been made in Council. And the Senecas, and the Chairman of the Committee on Indian Affairs, agree in the declaration, that all treaties ever made with the Indian tribes, have been made in open Council, or by delegates duly authorized.

5th,—The Senecas contend, that the amended treaty has not received the requisite assent of the Senate, viz. two thirds of the Senators present concurring,—but was assented to by a majority of *only one.*

6th,—That the deed and first treaty constituted one contract, and that the first treaty being nugatory, the deed thereby became void, and must remain so until both the deed and amended treaty shall be confirmed and assented to by the Seneca nation, in a fair and legal

manner. The Senecas say the Ogden Company admitted that the deed required confirmation after the Senate amended the treaty, as shown by the Ogden Company's offer of life-leases to all those who should prefer not to emigrate, and "who assent to the *treaty to the lands* respectively held and occupied by them as farming lands."

7th,—That the deed and amended treaty are, in fact, connected together, and are to be considered as *one* contract,—both equally needing ratification on the part of the Seneca nation;—that all the considerations coming to the Senecas, are dependent on the treaty;—that the 10th article of the amended treaty expressly treats the deed as part of that treaty, and as being annexed thereto;—that the said 10th article would not be intelligible without the deed;—and that the $202,000 purchase money, is not to be paid to the Seneca nation, except as provided in that article;—that the amended treaty, not having received the assent of a majority of their chiefs and headmen in Council, nor the constitutional assent of the Senate, is void, and that the deed as part of it, is also void.

8th,—The Senecas also refer to a part of the above cited Resolution of the Senate, viz.—"if one or more of said tribes or bands, when consulted as aforesaid," (viz. in General Council,) "shall freely assent to said treaty as amended, *and to their contract connected therewith*, it shall be binding and obligatory upon them so assenting." Now the Senecas say the only *contract* here referred to, is the said deed of conveyance to Ogden and Fellows;—

that since this Resolution of the Senate, the Senecas have never assented to that deed or contract ;—and that for this reason also, the deed is void.

9th,—The Senecas also contend, that the deed and treaty forming but one contract or instrument, both of them required the assent of Massachusetts.

10th,—The Senecas also say, that several of those whose names appear on these instruments, are not chiefs, nor entitled to represent their nation.

These are the principal objections urged against the deed and treaty,—and, as probably three fourths of the whole Seneca nation are opposed to emigration, and to the sale of their lands, these objections are pressed with great feeling and bitterness.

Indeed, we have no doubt that very "improper means" have been used to obtain the assent of the Senecas, to the deed and treaty. And this opinion has also been expressed by the President of the United States,—by the Chairman of the Committee on Indian Affairs,—and by the Society of Friends. Neither can be supposed to have any interest to mislead their judgment,—and each has had every opportunity, for examining and understanding this subject thoroughly.

If the Governor and Council of Massachusetts, in 1839, had known all that had occurred in this unhappy business, even when the deed was presented for their approbation, we are confident they would not have approved it. But they did not know then that a very large majority of the Seneca nation was strongly opposed to a sale of their lands,—nor that the signatures of

several of their chiefs, had been obtained by bribery. Mr. Trowbridge was entrusted with the duties of agent of this Commonwealth; but it does not appear that he ever reported to this Department, a copy of the treaty,—nor any information of its provisions. Had he done so, or had this Department known the state of feeling among the Senecas, or could they have known that a treaty, forming an essential *part of the contract* for the purchase and sale of the lands, had been made, but would not be ratified by the United States, they would not have approved the deed,—certainly not unconditionally. And if they had known the provisions of the treaty, and their essential connection with the deed, they never could have imagined it *possible* that the Ogden Company would insist on the sufficiency of the deed, if the United States Government should reject the treaty, or if the treaty should be found not to have received the assent of the Seneca nation.

With all the information we possess at this time, Massachusetts would not now approve that deed. But, unfortunately, the question of approving the deed is not before us. The only question now is, what relief is there for the Senecas? If a proper representation of the case should be made by them to the President and Senate of the United States, it is possible that the amended treaty may be annulled, or the assent of a majority of the chiefs and headmen of the Seneca nation, in open Council, may be declared requisite before it shall be carried into effect.

It is also stated, that Congress has made no appropria-

tion for carrying into effect this treaty; and it may well refuse to do so, if satisfied that the deed and treaty have been obtained by deception practised on the United States, on this Commonwealth, and on the Senecas. Whichever course may be pursued, we may expect that those who represent this State, the duly constituted Friend and Protector of the Seneca nation, will strenuously endeavor to cause justice to be done to them.

In regard to the deed, the Ogden Company say it passed to them a perfect title; the Senecas deny this, for the reasons given. But this only raises a legal question,—a question of title to the lands, which must be determined by a Judicial tribunal, and can not be determined by the Executive Department of Massachusetts. It would be difficult for that Department to make a proper inquiry into the subject;—and if it could do so, its decision would not bind the Senecas, or the Ogden Company. If the Ogden Company proceed to take possession of the lands, or exercise any acts of ownership over them, the Senecas will have their legal remedy, and undoubtedly will pursue it. If the Ogden Company seriously think they have a legal title to the lands under the deed, (obtained and approved as that deed was,) they may institute legal proceedings to oust the Senecas.

Considering the nature of the objections to the Ogden Company's title, we think the character of that Company, and of those who conduct its affairs, as well as the interest of both parties, require that those objections should be fairly met, and judicially settled without delay. Until that shall be done, the Senecas will probably

remain at their *old homes*;—and the Ogden Company may not find it easy to sell them, or any part of them, to any prudent purchaser.

The Committee will give no opinion whether it is, or is not for the interest and happiness of the Senecas to abandon their lands and improvements in New York, and retire to the West of the Mississippi. A very large majority of them, believe it is not for their interest and happiness to do so; and, in a matter affecting themselves only, they should be permitted to *decide for themselves.*

Believing that the Governor and Council of Massachusetts, cannot, at this time, give any direct relief to the Seneca nation concerning the subjects submitted to us, the Committee respectfully recommend, that the further consideration of the same be indefinitely postponed.

By order of the Committee,

JOHN R. ADAN, *Chairman.*

Council Chamber, Nov. 21, 1840.

Commonwealth of Massachusetts.

NOVEMBER 21, 1840.

This Report is accepted, by the Executive Council, and is approved by His Excellency the Governor.

JOHN P. BIGELOW,

Secretary of the Commonwealth.

ERRATUM.—Page 6, line 21, for "said Ogden" read "Samuel Ogden"

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